



**TO:** State Workforce Innovation Council Chairperson  
Marion County Workforce Investment Board Chairperson & Director  
Regional Workforce Board Chairpersons  
Regional Operators  
Directors of Operations for Northern and Southern Indiana

**FROM:** Andrew J. Penca *AMP*  
Commissioner, Indiana Department of Workforce Development

**DATE:** August 30, 2007

**SUBJECT:** DWD Policy 2007-14  
Regional Contracting

#### **Purpose**

To provide policy and operational direction concerning contracting conducted at the regional level

#### **Rescission**

DWD Policy 2005-16, Competitive Procurement of Regional Operators, Fiscal Agents, and Service Providers for Program Year 2006, dated April 24, 2006

DWD Policy 2006-20, Definition of Service Providers and Rules for Contracts, dated May 4, 2007

#### **Contents**

Indiana's Strategic Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act, Modification 3, for the time period July 1, 2005 through June 30, 2009 was approved by the U. S. Department of Labor on June 29, 2007. The State Plan outlines a specific chain of authority for contracting within the state workforce system.

#### **Chain of Authority for Contracting**

Funds will be granted to Indiana's two workforce investment boards: the State Workforce Innovation Council (SWIC), acting as the Balance of State Workforce Investment Board for all counties in the State except Marion County, and the Workforce Investment Board for Marion County, the Indianapolis Private Industry Council (IPIC).

- IPIC shall issue requests for proposals to contract with service providers in Marion County.
- The SWIC, acting as the workforce investment board for the balance of state, will grant funds to the eleven regional workforce boards pursuant to IC 22-4.5-8.<sup>1</sup> In turn, the eleven regional workforce boards will contract with regional operators to oversee the workforce development system in each region. Because state law prohibits regional operators from providing direct client services (IC 22-4.5-7-6), each regional workforce board shall issue requests for proposals to contract with not more than six service providers per region. Direct client services are defined to mean services provided by direct contact with a client.

A service provider is any entity who receives funds through the workforce investment board or the regional workforce board to provide client services. Service providers must be independent contractors and must be procured as a result of a full and open competitive process. At the discretion of the regional workforce board, the contract for service may be drafted directly between the regional workforce board and the service provider or may include the regional operator as a party. Service providers include regional operators and fiscal entities procured by the regional workforce board. The Balance of State WIB does not sign these contracts.

#### Regional Operators

The regional operator shall be an independent contractor hired by the regional workforce board through a full and open competitive process. The competitive process must include at least the following elements:

- A formal, public, printed announcement
- An applicants' conference (optional)
- A pre-established and published set of selection criteria (which include applicant's past performance)
- Pre-set weightings for the above criteria
- A formal, hardcopy application
- A documented application review
- Documented negotiations between the regional workforce board and the successful candidate
- A legal contract between the regional workforce board and the regional operator detailing goals, procedures, and obligations, including deliverables.

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<sup>1</sup> . The Balance of State WIB is the selecting and awarding authority for grants and contracts in accordance with Indiana as a Two-Workforce Service Area State, and federal statutory requirements which reserve this authority to the local board. The SWIC, acting as the Balance of State WIB, signs the grant documents between each regional workforce board and the State. By signing the grant, the SWIC, acting as the Balance of State WIB, provides approval for the workforce development activities conducted in the regional area.



Proposing entities shall be assessed by at least the following criteria:

- Satisfactory record of past performance in providing similar services
- Satisfactory record of organizational integrity and fiscal accountability
- Necessary organizational experience and operational controls
- Adequate management and participant data systems to generate timely and accurate reports
- Ability to meet the desired goals at a reasonable cost.

Applicants should also provide the following and may be required to provide other documents as well:

- A list of the applicant's board of directors, officers, and owners
- The most recent financial statement or audit
- Corporate status and statement of incorporation.

Any individual, partnership, or incorporated organization, for-profit or non-profit, may apply.

The regional workforce board shall select the regional operator who shall serve as staff to the board, but remain an independent contractor.

All contracts for regional operators shall be no longer than two years in duration. Contract extensions at the discretion of the regional workforce board for up to 12 months may be allowed contingent upon successful execution of the regional operator duties under the contract and successful operation of the programs.

#### Fiscal Entities

There is a single fiscal agent for the Balance of State Workforce Service Area in accordance with the provisions of WIA Section 117(d)(3)(B)(i)(II) which is the Indiana Department of Workforce Development. DWD competitively procured an entity to provide fiscal services for the regional workforce boards across the State. However, DWD also allowed each regional workforce board to competitively procure their own fiscal entity in conjunction with their regional chief elected official to assist in the administration of grant funds allocated to the region.

If the regional workforce board chooses not to utilize the State procured fiscal agent, then the region's fiscal entity shall also be an independent contractor hired by the regional workforce board in a full and open competitive process, which shall at a minimum include the same elements as mentioned above for the selection of regional operators.

Any individual, partnership, or incorporated organization, for-profit or non-profit, may apply. The same entity may apply for and serve as both regional operator and fiscal entity.

The regional workforce board shall select the fiscal entity that will serve as fiscal staff to the board but remain an independent contractor. Persons serving as fiscal staff to the board are employees of the fiscal entity, not the regional workforce board.

All contracts for fiscal agents shall be no longer than two years duration. Contract extensions for up to 12 months may be allowed and are contingent upon satisfactory performance as determined by the regional workforce board.

The regional workforce board may combine the requests for proposals and have a single entity serve as both regional operator and fiscal entity.



### Service Providers

The service providers shall be independent contractors. There may be no more than six Workforce Investment Act service providers in a region. The regional workforce board must approve the regional operator request for proposal and may participate in the selection process at the level it desires.

The request for proposal for service provider(s) is to be issued by the regional operator in a full and open competitive process in a manner similar to that used to select the regional operators. It shall, at a minimum, include the same elements and criteria as mentioned above for the selection of regional operators.

There are *two options* in the selection of service provider(s):

Option One. The regional operator will competitively procure and contract with service provider(s). The regional operator's request for proposal for service provider(s) must be reviewed and accepted by the regional workforce board and the regional workforce board may elect to participate in the proposal review and service provider(s) selection process.

Option Two. The regional operator will competitively procure service provider(s) and, at the discretion of the regional workforce board, the service provider contracts may be between the regional workforce board and the service provider(s) under the following three conditions:

- The regional operator's request for proposal for service provider(s) must be reviewed and accepted by the regional workforce board.
- The regional workforce board must actively participate in the proposal review and selection processes for service provider(s).
- The regional operator must serve as the regional workforce board's agent in the oversight, directing and monitoring of the service provider(s) and the service provider(s) contracts.

Applicant organizations shall present a plan for service levels and deliverables including, but not limited to, the following categories:

- Number to be served
- Number to complete services
- Clients' status at exit
- Job placement rates
- Job retention rates
- Credential/skill attainment rates
- Earnings gains.

A service provider's contract is limited to 2 years, but may be extended (without another competitive bid process) for a period of not more than 12 months after the original end date if it met its performance measures at the most recent evaluation/monitoring. These extensions also shall not extend more than 12 months after the original end date.

Per State statute (IC 22-4.5-7-9), a regional operator or fiscal entity may not be simultaneously both service provider and regional operator or fiscal entity in the same region.

Contract Language

The contract between an IPIC service provider, or the regional operator and the service provider, with the regional workforce board as a party to the contract, must include the following as indicated for each requirement:

1. Assignment: (regional workforce boards only)
  - a. The contract will contain a provision that assigns the contract to the regional workforce board in the event the regional operator is terminated.
  - b. The regional workforce board can then make a new assignment of its interest in the contract to the new regional operator.
  - c. It will also include a safety clause for the service provider that requires the new regional operator to continue the contract with the service provider or, if a new contract needs to be written, to allow the regional operator to sole source it to the current service provider – pursuant to all other terms of their original contract.
2. Indemnification language for disallowed costs: (Both the workforce investment boards and regional workforce boards)
3. Additional language: (regional workforce boards only)

The following clause must be included in the contract (if not originally, then through modification):

“Contracts with the service provider will be constructed in one of the two following ways:

1. The regional workforce board is party to the contract, along with the regional operator, and designates the regional operator to be the oversight entity for the service provider; or
2. The regional operator is sole party to the contract with the service provider. In cases when the contract is terminated with the regional operator, the contract will be transferred to the regional workforce board and subsequently to the newly designated regional operator.”

Conflicts of Interest Pursuant to IC 22-4.5-7-6:

- A service provider shall not provide regional operator or fiscal entity services for the same regional area.
- The regional operator shall not contract with a service provider to perform regional operator duties.
- A service provider’s contract shall be for two years, but may be extended (without another competitive bid process) for a period of not more than 12 months after the original end date, contingent upon the quality of services. State standards for quality of services will be established.
- A service provider or any representative of the service provider shall not be a member of the regional workforce board.



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**Review Date**

December 1, 2009

**Ownership**

Program Policy

**Effective Date**

January 1, 2008

**Action**

All parties should be made aware of the definition of a service provider. All workforce investment boards and regional workforce boards must ensure compliance with the contractual requirements so that all contracts with service providers include the specific, required clauses and have the chair of the workforce investment board or regional workforce board as a signatory to the contract. Contracts that are already in place should be modified to comply with this policy.

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